

1992

David Blaine v. Pamela Bradshaw (Blaine) : Reply Brief

Utah Court of Appeals

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920734 CA

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

DAVID BLAINE,

Plaintiff/Appellee,
vs.

PAMELA BRADSHAW (BLAINE),

Defendant/Appellant.

:

:

:

Case No. 92-0734-CA

:

:

REPLY BRIEF OF APPELLANT

APPEAL FROM A DECISION ENTERED BY
THE THIRD DISTRICT COURT IN AND FOR SALT LAKE COUNTY,
HONORABLE ANNE STIRBA, PRESIDING
(Case No. Below 86-490-0291)

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MAY 28 1993


Mary T. Noonan
Clerk of the Court

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vs.	:	Case No. 92-0734-CA
PAMELA BRADSHAW (BLAINE),	:	
Defendant/Appellant.	:	

REPLY BRIEF OF APPELLANT

DEFENDANT/APPELLANT, Pamela Bradshaw ("Ms. Bradshaw"),
by and through counsel, Brian M. Barnard of the Utah Legal
Clinic, pursuant to the Utah Rules of Appellate Procedure,
submits the following **REPLY BRIEF** in support of her appeal:

INTRODUCTION

Several factors prompted Ms. Bradshaw to seek modification of the parties' 1986 divorce decree in April, 1991. The original decree did not provide for the escalation of support for the parties' child Allison once Appellee's ("Mr. Blaine's") income substantially exceeded one thousand two hundred and fifty dollars (\$1,250.00+) per month. Amended Findings of Fact and Conclusions of Law, ¶ 5, Exhibit "B"

attached to Appellant's Brief ("Amended Findings"). However, in April, 1991, Mr. Blaine was earning two thousand eight hundred fifty-two dollars (\$2,852.00) per month, more than **twice** the maximum monthly income anticipated in the original decree.¹ Amended Findings, ¶ 9; Complaint, ¶ 2, Exhibit "A" attached to Appellant's Brief ("Complaint"). Also in April, 1991, Allison was eight years old and the cost of caring for her had increased as she matured. Amended Findings, ¶ 4; Complaint, ¶ 2. The effects of inflation had also made caring for Allison more expensive. Amended Findings, ¶ 4; Complaint, ¶ 2.

On the basis of these factors and in order to further Allison's best interests, Ms. Bradshaw petitioned the trial court to modify the parties' 1986 divorce decree. Although the trial court granted certain portions of Ms. Bradshaw's petition, the court refused to modify the original decree in the following important ways: (1) the trial court declined to order Mr. Blaine to increase his contribution to Allison's care retroactive to April, 1991, the date he was served with the Petition for Modification ("petition"); and, (2) the trial court failed to modify the existing decree to allow Ms. Bradshaw, as the custodial parent, to again claim Allison as her dependent for the purposes of income taxes. Because these rulings were based on legal error, and were

¹ As of October 15, 1991, Mr. Blaine's monthly salary was three thousand eighty-one dollars (\$3,081.00) per month.

made without sufficient factual findings or legal reasoning, Ms. Bradshaw now appeals the trial court's decision.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

I. Issues

Mr. Blaine's statement of the issues in this case is misleading. For example, Mr. Blaine characterizes one of the issues before this court as whether the trial court erred when it refused to order that Mr. Blaine's increased child support obligation be retroactive to before October, 1991, even though, allegedly before that date "there was no substantial change in circumstances as defined by the Uniform Civil Liability for Support Act." Appellee's Brief at 1. However, Mr. Blaine never cites or quotes a statutory definition of "substantial change" and relies on his mistaken reading of Utah Code Ann. § 78-45-7.2 (6) 1953 as amended), to suggest a vague definition of "substantial change." Mr. Blaine ignores two crucial problems with his assertion. First, § 78-45-7.2 (6) applies only to the impact that the enactment of or change in the guidelines may have on child support obligations. Because the provision is strictly limited in scope, it cannot provide a workable definition of "substantial change" for the broad purposes of the Act. Second, § 78-45-7.2 (6) provides that a 25% or more increase from an existing child support order and a new obligation under Utah's child support guidelines is a

sufficient -- not a necessary -- basis for a modification of the obligation. Because § 78-45-7.2 (6) provides only one possible definition of a "substantial change" for the purpose of the Act, that "definition" is of little value to a general understanding of the term.

Mr. Blaine also misrepresents the second issue before this Court. He characterizes this issue as whether the trial court erred when it refused to transfer the tax dependency exemption to Ms. Bradshaw even though "based on the stipulated facts, there was no change in the circumstances upon which the Decree of Divorce was based." Appellee's Brief at 1. Contrary to Mr. Blaine's contention, the stipulated facts in this case confirm that substantial changes in the parties' circumstances did occur after the 1986 decree. These new circumstances -- an increase in Mr. Blaine's 1991 income to 2.5 times above the maximum income anticipated by the original decree, (Findings of Fact, ¶ 2), and the increase in the cost of caring for Allison, (Findings of Fact, ¶ 4) -- required that the tax exemption be transferred to Ms. Bradshaw. Although these are the changed circumstances which prompted the trial court to increase Mr. Blaine's support obligation to Allison, they also establish the proper basis for a transfer of the award of the tax dependency exemption.

II. Standard of Review

Because the trial court's ruling was based on stipulated facts, there are no disputed facts in this case. Accordingly, this Court should review the decision below for correctness and should afford no deference to the trial court's conclusions. Whitehead v. Whitehead, 836 P.2d 814 (Utah App. 1992); Smith v. Smith, 793 P.2d 407, 409 (Utah App. 1990).

Despite the soundness of this authority, Mr. Blaine contends that the proper standard of review in this case is "whether the lower court abused its discretion or committed manifest injustice." Appellee's Brief at 1. While this standard of review may be appropriate when the trial court has broad discretion to make factual findings and apply them within the "confines of legal precedence," Crockett v. Crockett, 836 P.2d 818, 819 (Utah App. 1992); *see also*, Fullmer v. Fullmer, 761 P.2d 942 (Utah App. 1988); Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah App. 1987), it is not appropriate when the legal conclusions made by the lower court are at issue. Fullmer v. Fullmer, 761 P.2d at 945 ("we review the proffered facts and draw our own legal conclusions therefrom"). Because an appeals court is in as good a position to review stipulated facts as is the court below, this Court should not defer to trial court's conclusions. Id.; Whitehead v. Whitehead, 836 P.2d at 816; Smith v. Smith, 793 P.2d at 409.

In addition, Ms. Bradshaw challenges the adequacy and appropriateness of the findings by the trial court. When the suitability and sufficiency of the findings below is at issue, this court has determined that the failure to make proper findings can be itself an abuse of discretion. Hill v. Hill, 841 P.2d 722 (Utah App. 1992); Motes v. Motes, 786 P.2d 232 (Utah App. 1989); Jefferies v. Jefferies, 752 P.2d 909, 911-12 (Utah App. 1988).

SUMMARY OF ARGUMENT

The trial court made several errors when it declined to modify portions of the original divorce decree as requested by Ms. Bradshaw. First, the trial court relied on an improper interpretation of Utah Code Ann. § 78-45-7.2 (6) (1953 as amended) (hereafter "§ 78-45-7.2 (6)"), when it refused to order that Mr. Blaine's increased child support obligation be retroactive to the date of service of the petition. Although § 78-45-7.2 (6) applies only to modification orders based on the enactment of or changes in the Child Support Guidelines (the "guidelines"), the trial court applied it to Ms. Bradshaw's petition which recites Mr. Blaine's increased income and the rising cost of Allison's care as the grounds for modification.

Second, the trial court improperly denied Ms. Bradshaw's request that she, as the custodial parent, be allowed to again claim Allison as her dependent for income

tax purposes. Despite the presumption embodied in the Child Support Guidelines, Federal tax code, and Utah case law that the custodial parent should be awarded the dependency exemption, the trial court refused to transfer the exemption to Ms. Bradshaw. In addition, the trial court offered no findings to substantiate its conclusion to deviate from the guidelines or established precedent. This failure alone constitutes reversible error.

Although Mr. Blaine offers several arguments to justify the trial court's rulings, his contentions are fruitless. Mr. Blaine attempts to defend the trial court's decision to limit the retroactivity of his increased support obligation to Allison. Without the benefit of statutory authority or judicial precedent, Mr. Blaine insists that § 78-45-7.2 (6) creates a rebuttable presumption that a 25% increase in child support from the existing order to the amount established under the guidelines is mandatory to establish a substantial change in circumstances.

However, Mr. Blaine fails to note that § 78-45-7.2 (6) is limited in application and deals only child support orders affected by the "enactment of the guidelines and any subsequent change in the guidelines . . ." Utah Code Ann. § 78-45-7.2 (6) (1953 as amended). Because Ms. Bradshaw's petition does not rely on the enactment of or a change in the guidelines to establish a substantial change in circumstances, the provision is not relevant to her petition for

modification. Even if § 78-45-7.2 (6) were relevant it would not support Mr. Blaine's contention -- the provision merely establishes a sufficient condition for substantial change of circumstances, not a necessary or presumptively rebuttable one.

Mr. Blaine also tries to defend the trial court's refusal to transfer the tax dependency exemption to Ms. Bradshaw as the custodian of Allison. Mr. Blaine insists that the stipulated facts indicate that there has not been a substantial change in circumstances which warrants reconsideration of the award of the tax dependency exemption provided in the original decree. However, Mr. Blaine ignores that two significant factors -- the substantial increase in his salary and the increase in the cost of caring for Allison -- are relevant to the award of the exemption. Mr. Blaine also forgets that Utah's Child Support Guidelines, the Federal tax code, 26 U.S.C. § 152(e) (1988), and judicial precedent all assume that the custodial parent should be awarded the tax dependency exemption. In light of this authority, the trial court is obligated to abide by the guidelines, or in the alternative, to provide sufficient and adequate findings to explain its departure from the statutorily mandated factors and Utah case law.

ARGUMENT

I. The Court Order Increasing Mr. Blaine's Support Obligation to Allison Should be Made Retroactive to April, 1991, the Date of Service of the Petition to Modify.

Although the trial court based its ruling concerning the retroactive effect of the increase Mr. Blaine's child support obligation on a misreading of § 78-45-7.2 (6), Mr. Blaine vainly attempts to defend the court's reasoning. To this end, Mr. Blaine insists that § 78-45-7.2 (6) creates a rebuttable presumption that a 25% difference between an existing child support order and a support obligation under the guidelines is necessary to establish a substantial change in circumstances for the purposes of modifying a support order. *For example*, Appellee's Brief at 10, 18 and 19. For several reasons, this interpretation of § 78-45-7.2 (6) is incorrect.

Most importantly, § 78-45-7.2 (6) applies only to the impact of the **"enactment of the guidelines and any subsequent change in the guidelines"** on child support obligations. Utah Code Ann. § 78-45-7.2 (6) (1953 as amended) (emphasis added).² This limitation on the scope of

² The relevant portion of Utah Code Ann. § 78-45-7.2 (6) (1953 as amended), states:

With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification of a court order, if there is a difference of at least 25% between the existing order and the guidelines

§ 78-45-7.2 (6) makes the provision irrelevant to Ms. Bradshaw's petition for modification. Mr. Blaine fails to acknowledge that Ms. Bradshaw's petition is **not** based on the enactment of or a change in the guidelines. Instead, Ms. Bradshaw claims that a substantial change in circumstances -- independent of the impact of the guidelines -- requires the modification of the parties' original decree. Ms. Bradshaw justifies her petition with two important stipulated facts -- (1) that in April, 1991, Mr. Blaine's income was more than twice the maximum anticipated by the divorce decree; and (2) that, since the decree, the cost of caring for Allison had increased significantly. These stipulated facts are not dependent on or related to the impact of the guidelines on Mr. Blaine's support obligation to Allison. Thus, § 78-45-7.2 (6) is not relevant to a determination of retroactivity or a finding of substantial change in circumstances in this case.

Furthermore, § 78-45-7.2 (6) in particular, and the guidelines in general, are not very helpful in resolving the issue of retroactivity. Rather, Utah Code Ann. § 30-3-10.6 (2) (1953 as amended),³ clearly gives the trial court

³ Utah Code Annotated § 30-3-10.6 (2) (1953 as amended) reads:

A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the . . . obligor

discretion to determine the proper date of retroactivity. Crockett v. Crockett, 836 P.2d at 820 ("[§ 30-3-10.6 (2)] grants to the trial court full discretion to decide when an increased award should be made effective").⁴ Because the Child Support Guidelines are not intended to limit or otherwise direct the discretion of the trial court as to the retroactive effect of support obligations, any presumptions created by the guidelines are also irrelevant to retroactivity.

In any case, § 78-45-7.2 (6) does not create a rebuttable presumption concerning the definition of substantial change in circumstances. Although Mr. Blaine asserts that a presumption is created, he fails to cite any authority to support this contention. Instead, he relies on Utah Code Ann. § 78-45-7.2 (2) (a) (1953 as amended) ("the Child Support Guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of . . . child support)," to sustain his claim. However, § 78-45-7.2 (2) (a) is not relevant to § 78-45-7.2 (6) or to the issue of retroactivity and any rebuttable presumption created by the provision is inapplicable to the trial court's ruling in this case.

⁴ Although the trial court herein has broad discretion to decide the retroactive effect of Mr. Blaine's increased child support obligation, it cannot base its decision on an improper reading of the law or make its decision without providing the parties with adequate explanation or support. Because the district court committed both these errors, its ruling is invalid.

As confirmed above, § 78-45-7.2 (6) is not part of the guidelines. Instead, § 78-45-7.2 (6) is a part of the procedure to implement the guidelines and is meant only to determine when the enactment of or changes in the guidelines **alone** create a substantial change in circumstances sufficient to require modification of a support obligation. Accordingly, § 78-45-7.2 (2) (a) does not encompass § 78-45-7.2 (6) as part of the guidelines and makes no presumption concerning the 25% increase provision.⁵

Mr. Blaine overlooks another crucial detail of § 78-45-7.2 (6). He fails to recognize that § 78-45-7.2 (6) specifies that a 25% increase in support obligation is a **sufficient**, rather than a **necessary** condition for the finding of a substantial change in circumstances. Thus, the only possible rebuttable presumption created by §§ 78-45-7.2 (2) (a) & (6) would be that a 25% difference between an existing support order and an obligation established by the guidelines serves "**as a ground**" -- not the only ground -- for a modification of the existing order. Utah Code Ann. § 78-45-7.2 (6) (1953 as amended) (emphasis added). Because Ms. Bradshaw is relying on other grounds, independent of § 78-45-7.2 (6), to justify her petition for modification, this presumption would not apply to or affect her claim.

⁵ Appropriately, in her petition asking for retroactivity to April, 1991, Ms. Bradshaw need not and does not seek a variance from the guidelines.

Finally, Mr. Blaine disputes Ms. Bradshaw's contention that the trial court erred by failing to provide adequate findings to support its conclusion that his increased support obligation to Allison was retroactive to only October, 1991. He challenges Ms. Bradshaw's claim even though the trial court relied solely upon an incorrect reading of § 78-45-7.2 (6) and offered no further findings to support its conclusion. However, Mr. Blaine fails to note that the trial court did not fulfill its obligation to sufficiently explain and support its rulings. Without findings by the trial court, the parties are in no position to assess or challenge the court's decision. Crockett v. Crockett, 836 P.2d at 820-821; Crouse v. Crouse, 817 P.2d 836, 838 (Utah App. 1991). In addition, without factual findings and documented reasoning by the trial court, an appellate court is unable to review the proceedings below. Id.; see also, Allred v Allred, 835 P.2d 974 (Utah App. 1992) (trial court must specify in its findings the reasons a tax exemption is not given to the custodial parent); Ostler v. Ostler, 789 P.2d 713, 715 (Utah App. 1990) (trial court must enter findings of fact on factors which constitute material issues); Motes v. Motes, 786 P.2d 232 (Utah App. 1989); Jefferies v. Jefferies, 752 P.2d 909 (Utah App. 1988). Given the requirements established in these cases, the trial court failed to make sufficient and adequate findings to support its decision. The trial court

relied on an incorrect interpretation of law and failed to address or consider other factors relevant to the retroactive effect of Mr. Blaine's child support obligation. This failure constitutes an abuse of discretion and requires that this court vacate the ruling below. However, because the conclusions below were based on stipulated facts, this Court can properly determine that Mr. Blaine's increased support obligation to Allison should be retroactive to April, 1991 on the basis of the undisputed facts before it.

The facts of this case require that the modification of the original child support order should be retroactive to April, 1991. The two factors, stipulated to by the parties as creating a substantial change in circumstances and as requiring a modification of the original decree, were both in existence in April, 1991. By April, 1991, Mr. Blaine's income was more than double the maximum anticipated by the original decree and the cost of caring for Allison had significantly increased. Accordingly, a substantial change in circumstances, sufficient to require a modification of the parties' existing child support obligations, had occurred by April, 1991. As a result, the increase in Mr.

Blaine's support obligation⁶ to Allison should be retro-active to that date.⁷

II. As the Custodial Parent, Ms. Bradshaw Should Be Awarded the Tax Dependency Exemption for Allison.

Mr. Blaine vainly defends the trial court's refusal to transfer the tax dependency exemption for Allison to her custodial parent. Again, Mr. Blaine's arguments are unsuccessful. The trial court's ruling is inconsistent with the Child Support Guidelines,⁸ with the Federal tax code, 26

⁶ The exact increase should be based upon the parties' stipulated incomes as of April 22, 1991.

⁷ After acknowledging the stipulation and finding "that the cost of caring for [Allison as] a nine year old child is substantially greater than for caring for [her as] a three year old child," Amended Findings, ¶ 4, Mr. Blaine criticizes Ms. Bradshaw for not introducing more evidence to support the fact that it is now more expensive to care for Allison. Appellee's Brief at 21. This criticism is misplaced. Initially, Mr. Blaine forgets that the parties stipulated to the fact that care for Allison has become **substantially** more costly. Because of this stipulation, Ms. Bradshaw does not need to introduce evidence concerning the increased cost of caring for Allison.

Second, Mr. Blaine forgets that one of the major goals of the child support guidelines was to eliminate the need for the introduction of receipts, itemizations and other proofs of expenses to support a child support obligation. The guidelines are presumed to be correct and to account for costs associated with rearing a child. Requiring Ms. Bradshaw to prove by further evidence that caring for Allison is more costly than it was in 1986, especially after the pertinent stipulation, would defeat the purpose of the Child Support Guidelines.

⁸ According to the *Utah Child Support Task Force*, Report On Proposed Child Support Guidelines, the guidelines presume that custodial parents claim their children as dependents for the purposes of income tax exemptions: "The basic child support figures are further adjusted reflecting the assumption that the custodial parent would receive the exemptions for all children. If the custodial parent

U.S.C. § 152(e) (1988), and judicial precedent, Motes v. Motes, 786 P.2d 232 (Utah App. 1989); Allred v Allred, 835 P.2d 974 (Utah App. 1992), each of which direct that the custodial parent should be awarded the exemption. Despite these mandates, the trial court determined that a transfer of the exemption was not warranted. Further, although it departed significantly from the guidelines and from judicial precedent, the trial court did not justifying its decision. Mr. Blaine's contentions cannot hide the fact that the trial court's failure to explain or support its ruling is erroneous.

Importantly, Mr. Blaine ignores that his new support obligation to Allison was based on the statutory Child Support Guidelines. These guidelines presume that the custodial parent is entitled to claim and does claim any children as dependents for the purposes of tax exemption.⁹

relinquishes the exemption, this could be grounds for an adjustment in the basic award." *Report On Proposed Child Support Guidelines* at 6, ¶ I, E (May 1988).

⁹ With an air of disbelief, Mr. Blaine states that "[t]he Appellant seems to be suggesting that the court's decision whether or not to modify the tax dependency exemption must be done in accordance with the Child Support Guidelines." Appellee's Brief at 24. Ms. Bradshaw is not just suggesting that compliance with the guidelines is necessary, she believes and understands that to be the law!

The child support award herein was based upon the guidelines which assume the custodial parent claims the child as a dependent for income tax purposes. If the custodial parent were not assumed to be claiming the child as a dependant, the guidelines would require more support from the non-custodial parent to the custodial parent. See, Allred v. Allred, 835 P.2d at 978 (the transfer of the tax dependency exemption to the noncustodial parent "should be

In order to depart from the rebuttable presumptions created by the guidelines, (Utah Code Ann. § 78-45-7.2 (2) (a) and (b) (1953 as amended)), the trial court must find that compliance with the guidelines would be "unjust, inappropriate or not in the best interest of a child in a particular case" Utah Code Ann. § 78-45-7.2 (3) (1953 as amended). Because the trial court made no findings at all to support its conclusion, it failed to comply with the statute and abused its discretion. Hill v. Hill, 841 P.2d at 724.

Mr. Blaine also failed to justify the trial court's departure from established case law concerning the award of the tax dependency exemption for Allison. Precedent in Utah sets forth factors to be considered by the trial court before it should order custodial parents to waive their tax exemptions:

First, the noncustodial parent must have a higher income and provide the majority of support for the child. Second, the trial court must, from its findings, determine that by transferring the dependency exemption to the noncustodial parent . . . [it is acting] in the best interests of the

limited to those situations where the non-custodial parent has the higher income and provides the majority of support for the child or children whose exemption is claimed -- **support at a level which can be increased as a result of a reduction in his or her tax burden'**") (quoting Motes v. Motes, 786 P.2d at 239, emphasis added).

Therefore, it is only fair, if not mandated by statute, that the custodial parent, the obligee, be allowed to claim the dependency exemption. Yes, the award of "the tax dependency exemption must be done in accordance with the Child Support Guidelines."

child, which in all but exceptional circumstances would translate into an increased support level for the child.

Allred v. Allred, 835 P.2d at 978. Rather complying with Allred, the trial court failed to make any findings concerning Allison's best interests. Specifically, the trial court did not explain why Allison's best interests did not require an increased support obligation from Mr. Blaine to offset the detriment to Ms. Bradshaw from not having the tax exemption. Despite these failures, Mr. Blaine continues to insist that the trial court properly refused to transfer the dependency exemption.

In addition, the trial court neglected to explain why the same substantial changes in circumstance that warranted an increase in Mr. Blaine's child support did not warrant a transfer of the tax dependency exemption to the custodial parent. While the trial court did determine that a "substantial change in circumstances of the parties . . . justifies modification of the [Mr. Blaine's] child support obligation," (Conclusions of Law, ¶ 3), it went on, without explanation, to find that "[t]here has not been a substantial change in circumstances of the parties sufficient to warrant altering the portion of the existing decree which awards to [Mr. Blaine] the right to claim the minor child of the parties as a dependent" for tax purposes. Id., ¶ 8.

Although both the guidelines and Utah case law mandate that the same circumstances which would justify a

modification of Mr. Blaine's child support obligation would justify a transfer of the dependency exemption, Mr. Blaine argues that such a position is not defensible. To make this assertion, Mr. Blaine ignores that the circumstances upon which an award of child support are based are the exact same circumstances upon which the allocation of the dependency exemption are based. As established in Allred, the factors relevant to allocation of the dependency exemption include reference to "the particular economic realities" of the parties. Allred v. Allred, 835 P.2d at 978 (quoting, Motes v. Motes, 786 P.2d at 239). The court must consider the incomes of the parties and the best interests of the child before it orders the transfer of the dependency exemption to the noncustodial parent. Allred v. Allred, 835 P.2d at 978. Similarly, the guidelines incorporate these economic factors into a statutory determination of a parent's child support obligation. The guidelines consider the incomes of the parties as well as the best interests of the child to properly set the obligations of the parties.

Mr. Blaine suggests that the only factor relevant to the award of the tax exemption to him was that he had a higher income and therefore has "more use" for the exemption. Appellee's Brief at 24. This myopic characterization of the factors underlying the award of the dependency exemption clearly ignores Allison's best interests. Further, this suggestion is contrary to Allred, which

considers the best interest of the child and the contribution of each parent to the care of the child in addition to the relative incomes of the parents. Allred v. Allred, 835 P.2d at 978. In that case, this Court specifically rejected the contention that the mere fact that one party has a greater income is an appropriate basis for the award of the dependency exemption to that party. Id. In addition, if greater income were the only factor upon which the award was made, the guidelines would not assume that the custodial parent is entitled to the tax exemption. Instead the guidelines would assume that the parent with the greater income would claim the exemption regardless of the best interests of the child. Because the guidelines make no such assumptions, Mr. Blaine's argument fails.

Finally, Mr. Blaine's argument that the guidelines do not apply to modifications of a pre-guideline decree also is unsuccessful. In 1986, when the parties' original divorce was granted, the statutory support guidelines were not in effect.¹⁰ However, when Ms. Bradshaw's petition for modification was heard in September, 1992, the guidelines were applicable to her claim. Appropriately, the trial court's modification of Mr. Blaine's support obligation to Allison was determined under these guidelines. Contrary to Mr. Blaine's suggestion, however, the guidelines cannot be followed piecemeal. As part of the determination of Mr.

¹⁰ The Guidelines went into effect in April, 1989.

Blaine's support obligation, the guidelines assume that Ms. Bradshaw is entitled to the tax exemption. The guidelines direct that the allocation of the dependency exemption be based upon the parties' custodial **versus** noncustodial status, not upon the relative incomes of the parties, as Mr. Blaine suggests.¹¹ Because the guidelines are applicable and were applied to Ms. Bradshaw's petition for modification, reason dictates that all of the assumptions they embody must be employed in the revision of the parties' original decree.

For the reasons provided above, Mr. Blaine has failed to justify the trial court's decision not to return the tax dependency exemption for Allison to Ms. Bradshaw. Mr. Blaine's arguments do not explain away the trial court's failure to comply with the presumption embodied in Utah's Child Support Guidelines, the Federal tax code and Utah case law that the custodial parent is entitled to the exemption.

¹¹ Mr. Blaine concedes that in setting support amounts, "Utah's Child Support Guidelines assume that the custodial parent is awarded the tax dependency exemption." Appellee's Brief at 26. Mr. Blaine then brushes aside this impediment to his position, and without citation to any authority says, that assumption only applies in the initial granting of a divorce and **not** in cases of modification such as this case. Id.

Mr. Blaine further ignores that statutory assumption, by simply repeating his belief that there has been no substantial change in circumstances relative to the dependency exemption. For the sake of argument, if we assume that there has been a sufficient change in circumstances, as Ms. Bradshaw posits, and the guidelines are being used to set the amount of new child support to be paid, then it follows that the guidelines must be followed with regard to the allocation of the dependency exemption.

In addition, Mr. Blaine cannot justify the trial court's failure to depart from the guidelines and judicial precedent without providing any findings to defend this departure. Furthermore, because the parties stipulated to the facts relevant to the award of the dependency exemption and this Court is in as good a position to consider these facts as was the trial court, this Court should draw its own legal conclusions from the facts. Accordingly, the Court should transfer the tax exemption for Allison to Ms. Bradshaw, the custodial parent.

CONCLUSION

As determined above, the trial court improperly based its conclusion concerning the retroactive effect of its child support order on a mistaken reading of Utah Code Ann. § 78-45-7.2 (6) (1953 as amended). As a result, the trial court neglected to provide necessary factual and legal findings to support its decision. The trial court also improperly refused to return the tax exemption for Allison to her custodial parent without adequate findings to support its departure from the statutory guidelines and established case law.

Furthermore, none of Mr. Blaine's arguments can justify the trial court's erroneous rulings. Specifically, Mr.

Blaine's contention that § 78-45-7.2 (6) creates a rebuttable presumption relevant to Ms. Bradshaw's petition for modification is unsuccessful. Ms. Bradshaw has not relied, and has no need to rely upon § 78-45-7.2 (6) to support her claim. Instead, she cites Mr. Blaine's increased income and the increased costs of caring for Allison as grounds for her petition. In addition, because § 78-45-7.2 (6) is not part of the guidelines, but a procedure for implementing them, § 78-45-7.2 (6) is not the source of a presumption created by the guidelines. Finally, § 78-45-7.2 (6) sets out only a **sufficient** condition for a substantial change in circumstances, not a **necessary** condition. As a result, the only presumption created by this section is that a 25% increase, due to the enactment or amendment of the guidelines, is sufficient cause for a modification of an existing child support obligation.

Mr. Blaine's argument that the stipulated facts in this case do not warrant a transfer of the dependency exemption is also ill-founded. The same economic realities -- the changing financial status of the parties and the increased costs of caring for Allison -- which required a modification of the original child support order also require transfer of the tax exemption to the custodial parent. Both Utah case law and the Child Support Guidelines consider economic factors and the best interests of the child in addition to relative incomes of the parties to award the dependency

exemption. In addition, Mr. Blaine's suggestion that the guidelines are not applicable to an alteration of the award of the dependency exemption is invalid. Because the trial court's modification of Mr. Blaine's child support obligation was based upon the statutory guidelines, the allocation of the tax exemption must also conform to the guideline's assumptions. Alternatively, if justice demands a departure from the presumption that the custodial parent is entitled to the exemption, embodied in the guidelines and Utah case law, the trial court must provide sufficient findings to support its deviation from these presumptions. Because the trial court failed to follow the guidelines and Utah case law and failed to justify its decision to do so, the ruling below is erroneous.

Accordingly, this Court should vacate the trial court's ruling concerning the retroactive effect of Mr. Blaine's increase child support obligation to Allison and the court's refusal to transfer the tax dependency exemption to Ms. Bradshaw. In light of the substantial change in circumstances which had occurred by April, 1991, this Court should conclude that considerations of Allison's best interests and the financial status of her parents require that the modification of Mr. Blaine's support obligation be retroactive to the date upon which Mr. Blaine received notice of Ms. Bradshaw's petition in an amount based upon their April, 1991 incomes. This Court should also direct

the trial court to enter an order requiring that Allison's best interests will be served by awarding Ms. Bradshaw, as her custodian, the tax dependency exemption commencing in 1992.

DATED this 28th day of MAY, 1993.

UTAH LEGAL CLINIC

by



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Ut. Code of Judicial
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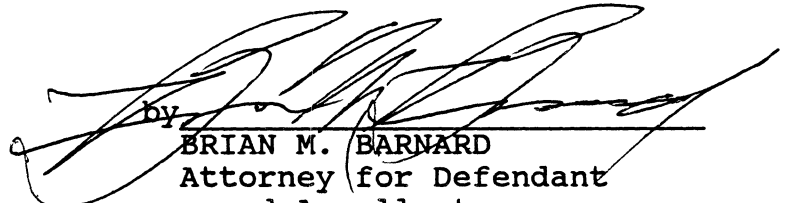
CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed four (4)
true and correct copies of the foregoing **APPELLANT'S REPLY**
BRIEF to:

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on the 28th day of MAY, 1993, postage prepaid in the United
States Postal Service.

UTAH LEGAL CLINIC


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